

STATE OF MICHIGAN  
COURT OF APPEALS

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ESTATE OF PERRY J. CARGAS and HELEN I.  
CARGAS,

UNPUBLISHED  
July 24, 2003

Plaintiffs-Appellees,

v

GLENN BEDNARSH and MICHAEL ESSHAKE,  
d/b/a MEL'S DINER,

No. 239421  
Oakland Circuit Court  
LC No. 01-007603-AV

Defendants-Appellants.

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Before: Zahra, P.J., and Talbot and Owens, JJ.

MEMORANDUM.

Defendants appeal by leave granted the circuit court order reversing a district court order awarding reasonable attorney fees, and awarding plaintiffs actual attorney fees incurred. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs brought this action in district court asserting that defendants breached a commercial lease agreement. As part of its judgment, the district court awarded plaintiffs reasonable attorney fees of \$5,000 under a lease provision allowing for the recovery of "actual attorney fees." The circuit court reversed as to the attorney fees, finding that plaintiffs were entitled to recover actual attorney fees (approximately \$43,000) under the lease. Defendants challenge this ruling on appeal.

Initially, we note that defendants do not cite any authority indicating that Michigan courts should construe contract language providing for the recovery of "actual attorney fees" to mean "reasonable attorney fees." Instead, defendants cite cases construing the recovery of statutory attorney fees. However, we note that none of these cases even involved a statute providing for the recovery of merely "attorney fees." Both *Hartman v Associated Truck Lines*, 178 Mich App 426, 430; 444 NW2d 159 (1989) and *Nelson v DAIIE*, 137 Mich App 226, 232-233; 359 NW2d 536 (1984), applied MCL 500.3148(1), which provides in pertinent part that "[a]n attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue." The other case defendants cite involved the construction of MCL 445.911(2), which provides in pertinent part that a party may recover "reasonable attorneys' fees." See *Smolen v Dahlmann Apartments, Ltd.*, 186 Mich App 292, 295; 463 NW2d 261 (1990). Thus, each of these cases is distinguishable from the instant matter and fails to support defendants' contention of error.

To be sure, where a contract provides for the recovery of “attorney fees” or “legal fees,” without more, we will construe that language to mean reasonable attorney fees. See *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195-196; 555 NW2d 733 (1996); *Papo v Aglo Restaurants of San Jose, Inc*, 149 Mich App 285, 299; 386 NW2d 177 (1986). However, where, as here, the contract language plainly and unambiguously provides for the recovery of “actual attorneys fees,” we must simply enforce the contract language as written. See *Mahnick v Bell Co*, 256 Mich App 154, 158-159; 662 NW2d 830 (2003). Consequently, defendants’ contention of error is without merit.

Affirmed.

/s/ Brian K. Zahra  
/s/ Michael J. Talbot  
/s/ Donald S. Owens